# Fraser Securities Pte Ltd v Poh Gaik Lye

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO MT1–22–673 OF 1997
SURIYADI J
14 OCTOBER 2004

*Contract — Settlement — Settlement agreement — Settlement of debt — Without prejudice correspondence — Whether could be relied upon parties after agreement reached — 'your indulgence to extend time' — Effect of such words written — Whether tantamount to finalizing agreement — Whether there were triable issues*

*Words and Phrases — 'Without prejudice' — Meaning of*

The plaintiff/respondent ('the plaintiff') is a securities firm based in Singapore. The defendant/appellant ('the defendant') opened an account with the plaintiff to trade in stocks and shares. The transactions were mainly by way of contra trading. By 17 December 1997 the defendant owed the plaintiff RM11,482,024.91 as contra losses, late payment charges and other incidental charges. Subsequently, the parties negotiated a settlement through their respective solicitors but the defendant failed to comply with the said settlement arrangement. The plaintiff then filed for a summary judgment application against the defendant pursuant to O 14 of the Rules of the High Court 1980 ('RHC') and succeeded. Dissatisfied, the defendant appealed.

**Held**, dismissing the appeal:

(1) Once an agreement has been reached with regard to settlement of a debt, what was left was merely a question of putting that agreement into effect and where the defendant failed to comply with the deadline of the payment as reflected in his letter, the defendant cannot rely on the 'without prejudice' letters written prior to the reaching of the settlement agreement to contend that there is a triable issue and to set aside the summary judgment (see paras 14 and 21).

(2) The words used by the defendant in a subsequent letter after an agreement had been reached, namely 'your indulgence to extend time' to put into effect the settlement agreement, were not words tantamount to finalizing an agreement but words adverted to by a person pursuant to a finalized agreement in need of breathing space and throwing himself at the mercy of the creditor (see para 16).

(3) The words 'without prejudice' means without prejudice to the position of the writer of the letter if the terms he proposes are not accepted. If the terms proposed are accepted a complete contract is established and the letter, although written without prejudice, operates to alter the old state of things and to establish a new one (see para 18); *Walker v Wilsher* (1889) QBD 335 referred.

[**Bahasa Malaysia summary**

Plaintif/responden ('plaintif') merupakan firma sekuriti yang bertempat di Singapura. Defendan/perayu ('defendan') telah membuka satu akaun dengan plaintif bagi perniagaan stok-stok dan saham-saham. Transaksi-transaksi tersebut, pada asasnya, dilaksanakan melalui cara dagangan kontra. Sehingga 17 Disember 1997 defendan telah berhutang dengan plaintif sebanyak RM11,482,024.91 sebagai kerugian kontra, pembayaran lewat dan pembayaran-pembayaran sampingan yang lain. Kedua-dua pihak kemudiannya telah mengadakan rundingan untuk satu penyelesaian melalui peguam-peguam mereka tetapi defendan telah gagal untuk mematuhi perjanjian penyelesaian. Plaintif kemudiannya telah membuat permohonan untuk penghakiman terus terhadap defendan menurut A 14 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') dan beliau telah berjaya. Terkilan dengan keputusan tersebut, defendan telah memfailkan rayuan.

**Diputuskan**, menolak rayuan tersebut:

(1) Setelah persetujuan telah dicapai berkenaan dengan penyelesaian hutang apa yang tinggal hanyalah persoalan untuk melaksanakan persetujuan tersebut dan apabila defendan gagal untuk memenuhi tempoh tamat pembayaran seperti yang tertera di dalam surat beliau, defendan tidak boleh bergantung kepada surat-surat 'without prejudice' yang ditulis sebelum persetujuan penyelesaian untuk menegaskan bahawa terdapat isu-isu yang boleh dibicarakan dan untuk mengetepikan penghakiman terus (lihat perenggan 14 dan 21).

(2) Perkataan-perkataan yang digunakan oleh defendan di dalam surat yang seterusnya selepas satu persetujuan dicapai, iaitu 'your indulgance to extend time' untuk merealisasikan persetujuan penyelesaian, bukan merupakan perkataan-perkataan yang bermaksud untuk menyelesaikan persetujuan tetapi perkataan-perkataan yang dirujuk oleh seseorang berdasarkan perjanjian yang telah diselesaikan yang memerlukan 'tempat bernafas' dan melontarkan dirinya kepada belas kasihan si piutang (lihat perenggan 16).

(3) Perkataan 'without prejudice' bermaksud tanpa prejudis kepada kedudukan penulis surat itu sekiranya terma-terma yang dicadangkan olehnya tidak diterima. Sekiranya terma-terma yang dicadangkan tidak diterima satu kontrak yang lengkap diwujudkan dan surat itu, walaupun ditulis tanpa prejudis, berfungsi untuk menukar keadaan lama sesuatu dan mewujudkannya kepada satu yang baru (lihat perenggan 18); *Walker v Wilsher* (1889) QBD 335 dirujuk.]

**Notes**

For cases on settlement agreements, see 3(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 4440–4444

A For cases on 'without prejudice' letters, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) para 1101

**Cases referred to**

B *Aluminium Industries Sdn Bhd v Cookermate (M) Sdn Bhd* [1990] 2 CLJ 777 (refd)
*Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400 (refd)
*Malayan Banking Bhd v Foo See Moi* [1981] 2 MLJ 17 (refd)
*Oh Kuang Liang v Associated Wood Ind Sdn Bhd* [1995] 4 MLJ 390
*Paddoch v Forrester* (1842) 3 Scott N R715
*Tomlin v Standard Telephones* [1969] 3 All ER 201 (refd)
C *Walker v Wilsher* (1889) 23 QBD 335 (refd)

**Legislation referred to**

Rules of the High Court 1980 O 14

D *Mohd Izral Khairy (Shearn Delamore & Co) for the plaintiff*
*S Ashok (Mohd Daud & Ngeow) for the defendant*

**Suriyadi J**:

E **[1]** The plaintiff/respondent is a securities firm based in Singapore whilst the defendant/appellant is a Malaysian individual. Pursuant to an agreement between these two persons the defendant opened an account with the plaintiff to trade in stocks and shares. Through the given account the defendant had conducted a number of share transactions by way of contra trading, carried
F out by the plaintiff, upon instruction of the former. As on 17 December 1997 debts accrued whereby the plaintiff claimed against the defendant a sum of RM11,482,024.91 for contra losses, late payment charges and other incidental charges. Despite repeated demands the defendant had failed to pay that said sum.

G **[2]** To the credit of both parties, attempts were made to settle the outstanding sum, with their respective solicitors communicating with each other on behalf of their clients. Messrs Mohd Daud & Ngeow representing the appellant defendant had begun the initiative when on 28 November 1997 had faxed a letter of proposal to the respondent plaintiff's solicitor in Singapore. In that letter the defendant had requested for an early reply to its proposal and had
H further enquired as to its acceptability. The reply came in the form of a very positive letter also dated 28 November 1997 from Messrs PK Wong & Advani, solicitors for the plaintiff. Thereafter there were other exchanges of correspondence between them, documents that were alluded to rather heavily by both parties. In those correspondences the details of the sum payable, and
I the manner of payments were laid down in some detail. Thereafter it was just a question of paying up, but that was not to be, as the defendant had failed to fulfill her part of the bargain.

**[3]** After the failure to make any payments or deposit of shares to the plaintiff, in accordance with the said settlement arrangement, the latter had filed the writ and statement of claim on 19 December 1997. By 23 January 1998 the defence had been filed. On 27 January 1998 the plaintiff filed a summary judgment application against the defendant (O 14 of the Rules of the High Court 1980) and came out successful on 10 July 1998. Being dissatisfied the defendant had filed an appeal before the judge in chambers and I had accordingly heard it. After hearing the submissions of both parties I had dismissed the appeal with costs. I now state my grounds for that decision.

**[4]** Before commencing with the appeal, both parties had informed me that the outcome of the appeal would depend substantially on my construction of the correspondences, which initially had begun as a 'without prejudice' letter. When posing the pertinent poser of whether I could look into the impugned document or documents, counsel for the respondent defendant replied in the negative. He stressed that these were 'off the record' correspondences which could not be tendered, the very issue that supports his contention that a triable matter existed. He submitted that as a final agreement had yet to be finalized these documents therefore could not be tendered.

**[5]** To appreciate the construction of these documents, and arrive at the conclusion whether an agreement had indeed been finalized, it is rather necessary that I reproduce some of the relevant documents for consideration. I begin off with the very first letter that started the ball rolling meant to arrive at a settlement.

> Our Ref : N / 11–97 / 1668/ L
>
> M/s Fraser Securities Pte Ltd
> 10, Collyer Quay #27–01
> Ocean Building
> Singapore 0104
>
> Dear Sir
>
> RE: Account No 01 / 28 / 028050
>
> We act for Mdm Poh Gaik Lye of 7, Jalan SS7/3, Kelana Jaya, Petaling Jaya, Selangor 47301 Malaysia.
>
> We are informed by our client that our client has an account with you abovementioned. A statement of account dated 24/11/1997 (Statement No 0322503) was sent by you to our client whereby a sum of RM 11,646,319.63 was shown to be due to you in the aforesaid statement
>
> Strictly without prejudice, we are instructed by our client to inform you that our client propose to settle with you the aforesaid sum of RM 11,646,319.63 in the following manner:

(1) A payment of RM 2 million will be made to you on the 10 December 1997 and at the same time our client will also deposit with you shares worth RM 2 million in market value as security.

(2) On the 20 December 1997, a further sum of RM 2 million will be paid to you and also to deposit to you further shares worth RM 2 million in market ualue as security.

(3) On the 30 December 1997 again a sum of RM 2 million will be paid to you and deposit again to you shares worth RM 2 million in market value as security.

The total shares deposited with you aforesaid shall be retained by you pending the instruction from our client for their disposal.

Kindly let as have your early reply whether the aforesaid proposal is acceptable to you.

Yours faithfully,

Mohd Daud & Ngeow

**[6]** The significance of the above letter is quite obvious. Apart from emanating from the defendant it:

(1) confirmed the defendant of having an account with the plaintiff;

(2) is an admission that a statement of account dated 24 November 1997 was sent to the defendant;

(3) confirmed that the statement reflected a sum of RM11,646,919.63 was due from the defendant;

(4) contained details which were strictly without prejudice then;

(5) contained proposals by the defendant to settle the sum due in the mode laid down in it; and

(6) it demanded an early reply whether the proposal of mode of settlement was acceptable to the plaintiff or not.

**[7]** Matters would have been made easier if the plaintiff had agreed and the defendant merely pay up in the manner it had agreed to resolve her financial problems. This did not occur, as a protracted correspondence ensued despite the acceptance of the defendant's proposal, as the plaintiff had proposed certain additional preconditions. The reply to the above letter was TTK–5 (25), which verbatim reads as follows:

YOUR REF : N/11-97/1668/L

OUR REF : JGA/Misc 8101.97/FSP/fc

DATE : 28 November 1997

Messrs Mohd Daud & Ngeow
9th Floor Room 906
Bangunan Lee Yan Lion
Jalan Tun Perak
50050 Kuala Lumpur

Dear Sirs

RE: Account No 01/28/028050

We are solicitor of Frasers Securities Pte Ltd of 10 Collyer Quay, #27–01 Ocean Building, Singapore, Your letter of 28 November 1997 addressed to our clients has been handed to us with instructions to write to you as follows:

(1) Your client's proposal is accepted. However, it must be clearly understood that punctual payment of each instalment of RM 2 million must be made. Please ensure that the monies for each instalment are telegraphically transferred to our client's account number 301-036455-001 at Hongkong Bank Malaysia Bhd, of 2 Leboh Ampang, 50100 Kuala Lumpur, Malaysia.

(2) In regard to the shares to be deposited as security, please note that clearly the basis of the valuation of the shares will be on the last transacted price as at the date of the deposit of the shares. If the value is less than RM 2 million per deposit your client will, of course, make up the difference by depositing more shares promptly, and in any event no later 3 days from such deposit

(3) All the shares will be valued again as at the close of trading hours on 30th December 1997. If the value is less than RM 6 million, your client will promptly and in any event no later than 3 days from 30 December 1997 making up the difference.

(4) If there is failure to perform the above or any one of them, this arrangement will be deemed cancelled.

Accordingly on the basis of your client's offer RM6 million would have beenreceived by our clients by 30 December 1997 leaving a balance of RM5,646,319.63. Of course interest will have to be worked out as well.

Our clients are concerned about the security being retained by them pending your client's instructions for its disposal. It is always our clients' intention to co-operate with their clients.

However, our clients cannot allow open-ended time frame for the recovery of monies due to them. Accordingly, they suggest that if your client fails to give instructions for the disposal by 15 January 1998, our clients will be at liberty to dispose off the shares provided as security without reference to your clients. In such event, if there is an excess after interest etc is reckoned such excess will be refunded to your client If there is a shortfall, your client will make payment prompt, and in any event no later than 3 days from such disposal of the shares.

Please let us hear from you by return.

Please ask your client to sign the copy of the letter as confirmation and return the same to us. Once it is signed kindly fax copy to us as soon as possible.

Yours faithfully

Sgd

**[8]** In a gist this reply highlighted that:

(1) the defendant's proposal of settlement was accepted;

(2) certain practical conditions were proposed, *inter alia*, the factor of time span for payment, how payments were to be made, which bank was to receive the payment;

(3) if the shares were to fall in value what courses of action would be undertaken by the parties;

(4) the agreement was deemed cancelled if there was failure to perform;

(5) the issue of interest must be worked out; and

(6) a request that the defendant sign a copy of the letter with the new conditions, as confirmation of acceptance of the new arrangement.

**[9]** Vide a letter dated 3 December 1997 the defendant agreed to the new proposal and even asked for the plaintiff's central depository number to permit the depositing of certain shares as suggested in the very first letter. Understandingly, a reply was forthcoming from the plaintiff, and it came in the form of a letter dated 4 December 1997 unfortunately proposing new terms. In other words matters were still under discussion.

**[10]** After a conversation between the respective solicitors the plaintiff faxed a letter dated 5 December 1997 that set out the final terms agreed by both parties. This letter in no uncertain terms had referred to the very first letter of 28 November 1997 addressed to the plaintiff by the defendant. This letter reads:

YOUR REF : N/11-97/1668/L

OUR REF : JGA/Misc 8101.97/FSP/fc

DATE : 5 December 1997

Messrs Mohd Daud & Ngeow
9th Floor Room 906
Bangunan Lee Yan Lian
Jalan Tun Perak
50050 Kuala Lumpur

Dear Sirs

RE: MDM POH GAIK LYE — ACCOUNT No 01/28/028050

We (Mr Ngeow / Mr Advani) spoke today. We now write to set out the final terms agreed between our respective clients in regard to the outstanding sum of RM 11,646,319,63 referred to in your letter of 28 November 1997 addressed to our clients.

(1) (a) Your client will make a payment of RM 2 million to our client on or before 10 December 1997.

(b) On that date your client will deposit as security with, our client marketable share traded on the Kuala, Lumpur Stock Exchange or on the Singapore Stock Exchange of a value which is not less than RM 2 million (the 1st tranche deposit).

(2) (a) Your client will make a further payment of RM 2 million to our clients on or before 20 December 1997.

(b) Your client will also on that date deposit wtth our clients as further security marketable share traded on the Kuala Lumpur Stock Exchange or on the Singapore Stock Exchange of a value which is not less than RM 2 million (the 2nd tranche deposit).

(3) (a) Your client will also make a payment of RM 2 million on or before 30 December 1997 to our clients.

(b) On the same date your client will also deposit with our clients a further quantity of shares traded on the Kuala Lumpur Stock Exchange or on the Singapore Stock Exchange of a value which is not less than RM 2 million (the 3rd tranche deposit) which is a further additional security.

(4) It is agreed that if there is default of any of the terms of this Agreement, the Agreement herein between our clients shall come to an end. Our clients may enforce the security thereafter. However, if time is time is granted to your client such indulgence will not be deemed to be a waiver of our clients rights. It is also agreed that for the purpose of each tranche deposit the valuation of the shares shall be as at the close of trading on the relevant Stock Exchange on the date of the deposit

(5) (a) On 30 December 1997, our clients will value all the shares so deposited. If the total value is less than RM 6 million, your client will promptly and in any event no later than 3 market days from receipt of notification make up the difference by depositing more shares or make cash payment

(b) Our clients will from time to time thereafter value all the shares so deposited. If the total value thereof is less than RM 6 million then your client will promptly and in any event, no later than 3 market days from receipt of notification make up the difference by depositing more shares or make cash payment The option is that of your client

(c) If your clients fail to make up the difference by depositing more shares or making cash payment, our clients may dispose of the shares at any time thereafter.

(6) It is agreed that the notification aforesaid shall be a written communication addressed to you, which will be deemed served by a facsimile transmission to you at your facsimile number 206-3950.

(7) Our clients will take no steps to dispose of the shares provided there is due compliance of this agreement to enable your client to make payment by the 15 March 1996 or to give instructions to dispose of the shares (or part of them) by 15 March 1998. For the sake of clarity your client may give instructions to dispose the shares or any part thereof from the date of the deposit of the shares up to 15 March 1998. The proceeds of such sale (if any) will be applied toward reduction of your clients' indebtedness to our clients.

(8) It is also agreed that your client is responsible to our clients for interest

(9) We have forwarded to you the details of our clients' bank account and depository agent account to enable payments and deposit of the shares to be effected.

We note however, that your client proposes to let our client have 3 postdated cheques. These cheques may be sent to our clients direct, marking the communication for the attention of Mr Tan Thuan Keng.

For the sake of good order, please confirm that this letter accurately sets out the terms that have been agreed.

Yours faithfully

Sgd

**[11]** Based on these five letters (two not reproduced verbatim), the defendant had vehemently said that the matter was yet to be finalized, hence the reason why the very first letter (the letter containing the without prejudice statement) and the rest should be rejected out of hand. Interestingly enough none of the other documents here had the stamp 'without prejudice' on them. On that premise itself, as canvassed by the defendant, there was a triable issue in hand and the matter should be set down for full trial.

**[12]** After sifting through the evidence and having scrutinized the other letters I had to disagree with the suggestion made by the defendant in the light of the subsequent letters. I start off by referring to a letter, also written by the defendant on the same day, in response to the above letter dated 5 December 1997, which reads:

YOUR REF : JGA / Misc 8101.97/FSP / fc

OUR REF : N/11-97/1668/L

DATE :5/12/1997

Merss P K Wong & Advani
20, Raffles Place # 12–03
Ocean Towers
Singapore 048620

Dear Sirs

RE: Account No. 01 /28/028050

We refer to the above matter and your letter to us dated today. We are please to inform you that our client has agreed to the terms and conditions as stated in your letter aforesaid.

We will forward you the 3 postdated cheques in due course.

Your faithfully,

Mohd Daud & Ngeow

**[13]** In a gist:

(1) this letter was in response to a letter received on the same day, which had laid down the final terms of the agreement;

(2) the defendant had accepted the finalized terms and conditions demanded by the plaintiff; and

(3) to seal the agreement the defendant had agreed to forward three postdated cheques.

**[14]** With an agreement having been reached, what was left was merely a question of putting that agreement into effect, with all parties adhering to it. Unfortunately the defendant did not comply with the dateline of the payment as reflected by a letter dated 10 December 1997, which reads:

YOUR REF : N/11- 97/1668/L

OUR REF : JGA/Misc 8101.97/FSP/fc

Dear Sirs

RE: Account No 01/28/028050

Yours of today is acknowledged. As we receive no call from you by 2pm we called you at about 2.30pm. We were informed that you were at a meeting and would turn up shortly. It now transpires that your meeting is still ongoing and that you will be calling us by about 5pm today.

Please note that our clients are most anxious about this matter. Please note that unless we hear from you at 5pm, our client may be compelled to move in this matter without further reference.

Yours faithfully

Sgd J G Advani

**[15]** A follow up letter from the defendant came in this version:

OUR REF : N/ll-97/1668/L

YOUR REF : JGA / Misc 8101.97/FSP / fc

DATE : 12 December 1997

Merss P K Wong & Advani
Advocates & Solicitors
20, Raffles Place # 12–03
Ocean Towers
Singapore 048620

Dear Sirs

RE: Account No 01 /28/028050

We refer to the above matter and the conversation between your Mr Advani and our Mr Ngeow yesterday.

We are instructed by our client to seek your client indulgence to push forward the date for another 5 days for our client to comply with all the agreed terms and conditions and the repayment and share deposit

Your client's kind consideration to our client's request is highly appreciated.

Thank you.

Yours faithfully,

Mohd Daud & Ngeow

**[16]** The above letter in crystal clear terms showed that the solicitors of the respective parties were still communicating with each other, with the last being 10 December 1997. The defendant in no uncertain terms was beseeching that an indulgence be given to her in the form of an extension of time. The very words used here in the like of 'your indulgence to extend' were not words of finalizing an agreement, but words adverted to by a person pursuant to a finalized agreement in need of breathing space, and now throwing himself at the mercy of the creditor. The same format or subservient tone was adverted to by the defendant in a letter dated 12 December 1997 requesting for breathing space again, of another five days from the plaintiff. See the following letter:

OUR REF :N/ll-97/1668/L

YOUR REF: JGA / Misc 8101.97/FSP / fc

DATE : 12 December 1997

Merss P K Wong & Advani,
Advocates & Solicitors
20, Raffles Place # 12–03
Ocean Towers
Singapore 048620

Dear Sirs

RE: Account No 01/28/028050

We refer to the above matter and the telephone conversation between your MrAdvani and our Mr Ngeow yesterday (10 December 1997).

We are instructed by our client to seek your indulgence to extend the 10.SQa.rn deadline to reply to you to 2.00pm today.

Your kind consideration of our client's request is highly appreciated.

Yours faithfully,

Mohd Daud & Ngeow (Sgd)

**[17]** Despite the above letter, the indulgence sought for was not granted, as indicated by the reply carrying the same date. In that reply the plaintiff succinctly stated unless the payment of RM2,000,000 was paid into the relevant account, particulars of which had been provided for to the defendant by the next day, and the first tranche of the shares toe transferred to the plaintiffs depository account, a suit was in the offing.

**[18]** What is the meaning of the phrase 'without prejudice'? Lindley LJ in *Walker v Wilsher* (1889) 23 QBD 335 had occasion to opine:

> What is the meaning of the words without prejudice? I think they mean without prejudice to the position of the writer of the letter if the terms he proposes are not accepted. If the terms proposed are accepted a complete contract is established and the letter, although written without prejudice, operates to alter the old state of things and to establish a new one.'

**[19]** The view of the above case was adopted by *Tomlin v Standard Telephones* [1969] 3 All ER 201 and was also approved by *Aluminium Industries Sdn Bhd v Cookermate (M) Sdn Bhd* [1990] 2 CLJ 777. In the simplest of interpretation it is a phrase spoken or something written on a document hence permanent in nature, when in the process of communication or correspondence, primarily en route to a negotiation of settlement. With the existence of the phrased proved, that negotiation cannot be referred to in court or relied upon by the two parties if the discussions fail (*Malayan Banking Bhd v Foo See Moi* [1981] 2 MLJ 17). As in this case, where the other correspondences did not have the phrase 'without prejudice' stamped or indicated anywhere, had I not concluded that an agreement had been finalized, they too would have been protected and hence inadmissible (*Paddoch v Forrester* (1842) 3 Scott N R 715; *Janab's Key to Criminal Procedure, Evidence, Advocacy and Professional Ethics* 1st Ed 783). This is so as the correspondences formed part of the negotiation package deal.

**[20]** To reiterate I am not unaware of the general rule that the 'without prejudice' rule applies generally to exclude all negotiations genuinely aimed at settlements whether oral or in writing from being given in evidence. On the other hand, where there already is a binding agreement between the parties then the content of documents or communications made 'without prejudice' are certainly admissible (*Halsbury's Laws of England* (4th Ed) paras 212 and 213; *Oh Kuang Liang v Associated Wood Ind Sdn Bhd* [1995] 4 MLJ 390; *Dictionary of Law* by Peter Collin Publishing).

**[21]** From the totality of the evidence, with particular reference to the letters, I was satisfied that both parties had indeed arrived at a finalized agreement. With a settlement now proved, the correspondences thus had become admissible in evidence of the terms of the agreement, and invariably open for consideration by the court. Even though the plaintiff had not produced every single item in the protracted correspondence of both parties, with the individual account application form tendered, of which were attached to it the terms and condition confirming the nexus between the parties, together with the contra statements corroborated unconditionally by the connected correspondences, apart from the existence of the offer and acceptance letters of the protracted negotiation signed by the defendant, there certainly was no triable issue left before me for consideration (*Bank Negara Malaysia v Mohd Ismail & Ors* (1992) 1 MLJ 400). On those solid grounds, I had not hesitated in dismissing the appeal with costs

*Appeal dismissed.*

Reported by Vinod Kamalanathan